

108TH CONGRESS
2D SESSION

H. R. 4062

IN THE SENATE OF THE UNITED STATES

MARCH 31, 2004

Received

AN ACT

To provide for an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958 through June 4, 2004, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. ADDITIONAL TEMPORARY EXTENSION OF AU-**
2 **THORIZATION OF PROGRAMS UNDER SMALL**
3 **BUSINESS ACT AND SMALL BUSINESS INVEST-**
4 **MENT ACT OF 1958.**

5 The authorization for any program, authority, or pro-
6 vision, including any pilot program, that was extended
7 through April 2, 2004, by section 1 of Public Law 108–
8 205 is further extended through June 4, 2004, under the
9 same terms and conditions.

10 **SEC. 2. EXTENSION OF CERTAIN FEE AUTHORIZATIONS.**

11 Section 503(f) of the Small Business Investment Act
12 of 1958 (15 U.S.C. 697 (f)), as amended by section 2 of
13 Public Law 108–205, is further amended by striking
14 “May 21, 2004” and inserting “October 1, 2004”.

15 **SEC. 3. FISCAL YEAR 2004 PURCHASE AND GUARANTEE AU-**
16 **THORITY UNDER TITLE III OF SMALL BUSI-**
17 **NESS INVESTMENT ACT OF 1958.**

18 Section 20 of the Small Business Act (15 U.S.C. 631
19 note) is amended by adding at the end the following new
20 subsection:

21 “(j) FISCAL YEAR 2004 PURCHASE AND GUARANTEE
22 AUTHORITY UNDER TITLE III OF SMALL BUSINESS IN-
23 VESTMENT ACT OF 1958.—For fiscal year 2004, for the
24 programs authorized by title III of the Small Business In-
25 vestment Act of 1958 (15 U.S.C. 681 et seq.), the Admin-
26 istration is authorized to make—

1 “(1) \$4,000,000,000 in purchases of partici-
2 pating securities; and

3 “(2) \$3,000,000,000 in guarantees of debentures.”.

5 **SEC. 4. COMBINATION FINANCING.**

6 (a) IN GENERAL.—During the period beginning on
7 the date of the enactment of this section and ending on
8 September 30, 2004, subsection (a) of section 7 of the
9 Small Business Act (15 U.S.C. 636(a)) shall be applied
10 as if the paragraph set forth in subsection (b) were added
11 at the end of that subsection (a).

12 (b) PARAGRAPH SPECIFIED.—The paragraph referred to in subsection (a) is as follows:

14 “(31) COMBINATION FINANCING.—

15 “(A) DEFINITIONS.—In this paragraph—

16 “(i) the term ‘combination financing’
17 means financing comprised of a loan guaran-
18 teed under this subsection and a commercial
19 loan; and

20 “(ii) the term ‘commercial loan’ means a
21 loan which is part of a combination financing
22 and no portion of which is guaranteed by the
23 Federal Government.

24 “(B) APPLICABILITY.—This paragraph applies
25 to a loan guarantee obtained by a small business

1 concern under this subsection, if the small business
2 concern also obtains a commercial loan.

3 “(C) COMMERCIAL LOAN AMOUNT.—In the case
4 of any combination financing, the amount of the
5 commercial loan which is part of such financing
6 shall not exceed the gross amount of the loan guar-
7 anteed under this subsection which is part of such
8 financing.

9 “(D) COMMERCIAL LOAN PROVISIONS.—The
10 commercial loan obtained by the small business con-
11 cern—

12 “(i) may be made by the participating
13 lender that is providing financing under this
14 subsection or by a different lender;

15 “(ii) may be secured by a senior lien; and

16 “(iii) may be made by a lender in the Pre-
17 ferred Lenders Program, if applicable.

18 “(E) COMMERCIAL LOAN FEE.—A one-time fee
19 in an amount equal to 0.7 percent of the amount of
20 the commercial loan shall be paid by the lender to
21 the Administration if the commercial loan has a sen-
22 ior credit position to that of the loan guaranteed
23 under this subsection. Paragraph (23)(B) shall
24 apply to the fee established by this paragraph.

1 “(F) DEFERRED PARTICIPATION LOAN SECUR-
2 RITY.—A loan guaranteed under this subsection may
3 be secured by a subordinated lien.

4 “(G) COMPLETION OF APPLICATION PROC-
5 ESSING.—The Administrator shall complete proc-
6 essing of an application for combination financing
7 under this paragraph pursuant to the program au-
8 thorized by this subsection as it was operating on
9 October 1, 2003.

10 “(H) BUSINESS LOAN ELIGIBILITY.—Any
11 standards prescribed by the Administrator relating
12 to the eligibility of small business concerns to obtain
13 combination financing under this subsection which
14 are in effect on the date of the enactment of this
15 paragraph shall apply with respect to combination
16 financings made under this paragraph. Any modi-
17 fications to such standards by the Administrator
18 after such date shall not unreasonably restrict the
19 availability of combination financing under this
20 paragraph relative to the availability of such financ-
21 ing before such modifications.”.

22 **SEC. 5. LOAN GUARANTEE FEES.**

23 (a) IN GENERAL.—During the period beginning on
24 the date of the enactment of this section and ending on
25 September 30, 2004, subparagraph (A) of paragraph (23)

1 of subsection (a) of section 7 of the Small Business Act
 2 (15 U.S.C. 636(a)(23)(A)) shall be applied as if that sub-
 3 paragraph consisted of the language set forth in sub-
 4 section (b).

5 (b) LANGUAGE SPECIFIED.—The language referred
 6 to in subsection (a) is as follows:

7 “(A) PERCENTAGE.—

8 “(i) IN GENERAL.—With respect to each
 9 loan guaranteed under this subsection, the Ad-
 10 ministrator shall, in accordance with such terms
 11 and procedures as the Administrator shall es-
 12 tablish by regulation, assess and collect an an-
 13 nual fee in an amount equal to 0.5 percent of
 14 the outstanding balance of the deferred partici-
 15 pation share of the loan.

16 “(ii) TEMPORARY PERCENTAGE.—With re-
 17 spect to loans approved during the period be-
 18 ginning on the date of enactment of this clause
 19 and ending on September 30, 2004, the annual
 20 fee assessed and collected under clause (i) shall
 21 be equal to 0.36 percent of the outstanding bal-
 22 ance of the deferred participation share of the
 23 loan.”.

24 (c) RETENTION OF CERTAIN FEES.—Subparagraph
 25 (B) of paragraph (18) of subsection (a) of section 7 of

1 the Small Business Act (15 U.S.C. 636(a)(18)(B)) shall
2 not be effective during the period beginning on the date
3 of the enactment of this section and ending on September
4 30, 2004.

5 **SEC. 6. EXPRESS LOAN PROVISIONS.**

6 (a) DEFINITIONS.—For the purposes of this section:

7 (1) The term “express lender” shall mean any
8 lender authorized by the Administrator to partici-
9 pate in the Express Loan Pilot Program.

10 (2) The term “Express Loan” shall mean any
11 loan made pursuant to section 7(a) of the Small
12 Business Act (15 U.S.C. 636(a)) in which a lender
13 utilizes to the maximum extent practicable its own
14 loan analyses, procedures, and documentation.

15 (3) The term “Express Loan Pilot Program”
16 shall mean the program established by the Adminis-
17 trator prior to the date of enactment of this section
18 under the authority granted in section 7(a)(25)(B)
19 of the Small Business Act (15 U.S.C. 636(a)(25)(B))
20 with a guaranty rate not to exceed 50 percent.

21 (4) The term “Administrator” means the Ad-
22 ministrator of the Small Business Administration.

23 (5) The term “small business concern” has the
24 same meaning given such term under section 3(a) of
25 the Small Business Act (15 U.S.C. 632(a)).

1 (b) RESTRICTION TO EXPRESS LENDER.—The au-
2 thority to make an Express Loan shall be limited to those
3 lenders deemed qualified to make such loans by the Ad-
4 ministrator. Designation as an express lender for purposes
5 of making an Express Loan shall not prohibit such lender
6 from taking any other action authorized by the Adminis-
7 trator for that lender pursuant to section 7(a) of the Small
8 Business Act (15 U.S.C. 636(a)).

9 (c) GRANDFATHERING OF EXISTING LENDERS.—Any
10 express lender shall retain such designation unless the Ad-
11 ministrator determines that the express lender has vio-
12 lated the law or regulations promulgated by the Adminis-
13 trator or modifies the requirements to be an express lender
14 and the lender no longer satisfies those requirements.

15 (d) TEMPORARY EXPANSION OF EXPRESS LOAN
16 PILOT PROGRAM.—

17 (1) AUTHORIZATION.—As of the date of enact-
18 ment of this section, the maximum loan amount in
19 the Express Loan Pilot Program shall be increased
20 to a maximum loan amount of \$2,000,000 as set
21 forth in section 7(a)(3)(A) of the Small Business
22 Act (15 U.S.C. 636(a)(3)(A)).

23 (2) TERMINATION DATE.—The authority set
24 forth in paragraph (1) shall terminate on September
25 30, 2004.

1 (3) SAVINGS PROVISION.—Nothing in this sec-
2 tion shall be interpreted to modify or alter the au-
3 thority of the Administrator to continue to operate
4 the Express Loan Pilot Program on or after October
5 1, 2004.

6 (e) OPTION TO PARTICIPATE.—Except as otherwise
7 provided in this section, the Administrator shall take no
8 regulatory, policy, or administrative action, without regard
9 to whether such action requires notification pursuant to
10 section 7(a)(24) of the Small Business Act (15 U.S.C.
11 636(a)(24)), that has the effect of—

12 (1) requiring a lender to make an Express Loan
13 pursuant to subsection (d);

14 (2) limiting or modifying any term or condition
15 of deferred participation loans made under such sec-
16 tion (other than Express Loans) unless the Adminis-
17 trator imposes the same limit or modification on Ex-
18 press Loans;

19 (3) transferring or re-allocating staff, staff re-
20 sponsibilities, resources, or funding, if the result of
21 such transfer or re-allocation would be to increase
22 the average loan processing, approval, or disburse-
23 ment time above the averages for those functions as
24 of October 1, 2003, for loan guarantees approved

1 under such section by employees of the Administra-
2 tion or through the Preferred Lenders Program; or

3 (4) otherwise providing any incentive or dis-
4 incentive which encourages lenders or borrowers to
5 make or obtain loans under the Express Loan Pilot
6 Program instead of under the general loan authority
7 of section 7(a) of the Small Business Act (15 U.S.C.
8 636(a)).

9 (f) COLLECTION AND REPORTING OF DATA.—For all
10 loans in excess of \$250,000 made pursuant to the author-
11 ity set forth in subsection (d)(1), the Administrator shall,
12 to the extent practicable, collect data on the purpose for
13 each such loan. The Administrator shall report monthly
14 to the Committee on Small Business and Entrepreneur-
15 ship of the Senate and the Committee on Small Business
16 of the House of Representatives on the number of such
17 loans and their purposes.

18 (g) TERMINATION.—Subsections (b), (c), (e), and (f)
19 shall not apply after September 30, 2004.

20 **SEC. 7. FISCAL YEAR 2004 DEFERRED PARTICIPATION**
21 **STANDARDS.**

22 Deferred participation loans made during the period
23 beginning on the date of the enactment of this Act and
24 ending on September 30, 2004, under section 7(a) of the
25 Small Business Act (15 U.S.C. 636(a)) shall have the

1 same terms and conditions (including maximum gross loan
2 amounts and collateral requirements) as were applicable
3 to loans made under such section on October 1, 2003, ex-
4 cept as otherwise provided in this Act. This section shall
5 not preclude the Administrator of the Small Business Ad-
6 ministration from taking such action as necessary to
7 maintain the loan program carried out under such section,
8 subject to appropriations.

9 **SEC. 8. TEMPORARY INCREASE IN LOAN LIMIT UNDER**
10 **BUSINESS LOAN AND INVESTMENT FUND AND**
11 **IN ASSOCIATED GUARANTEE FEES.**

12 (a) TEMPORARY INCREASE IN AMOUNT PERMITTED
13 TO BE OUTSTANDING AND COMMITTED.—During the pe-
14 riod beginning on the date of the enactment of this Act
15 and ending on September 30, 2004, section 7(a)(3)(A) of
16 the Small Business Act (15 U.S.C. 636(a)(3)(A)) shall be
17 applied as if the first dollar figure were \$1,500,000.

18 (b) TEMPORARY GUARANTEE FEE ON DEFERRED
19 PARTICIPATION SHARE OVER \$1,000,000.—With respect
20 to loans made during the period referred to in subsection
21 (a) to which section 7(a)(18) of the Small Business Act
22 (15 U.S.C. 636(a)(18)) applies, the Administrator of the
23 Small Business Administration shall collect an additional
24 guarantee fee equal to 0.25 percent of the amount (if any)

1 by which the deferred participation share of the loan ex-
2 ceeds \$1,000,000.

Passed the House of Representatives March 31,
2004.

Attest:

JEFF TRANDAHL,

Clerk.

By GERASIMOS C. VANS,

Deputy Clerk.